UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 584

Case No. 632: ADONGO

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Ioan Voicu; Mr. Mikuin Leliel Balanda;

Whereas at the request of Joshua Adongo, a former staff member of the United Nations Environment Programme, hereinafter referred to as UNEP, the President of the Tribunal, with the agreement of the Respondent, extended to 28 February 1992, the time-limit for the filing of an application to the Tribunal;

Whereas, on 8 November 1991, the Applicant filed an application containing pleas which read, in part, as follows:

"(a) ...

(b) ... the Applicant contests the Respondent's decision not to accept the recommendation of the ad hoc Joint Disciplinary Committee following an examination of the facts of the case brought against him, the Applicant, for alleged misconduct; towit that he should lose one step within grade but that his services should be retained by the Organization; and requests that the said decision by the Respondent be rescinded;

(c) ... the Applicant requests that the Respondent be required to accept the recommendations of administrative machinery established by him under regulation 11.1 of article XI of the Staff Regulations of the United Nations.

(d) In the event that the Respondent should choose the option provided under article 9, paragraph 1 of the Statute not to rescind his decision, the Applicant, in addition to any sums paid during his suspension from duties, seeks (i) full compensation under annex III (Termination Indemnity) of the Staff Regulations of the United Nations (Rev. 21, 1991) plus, in lieu of notice, a sum of not less that one month's salary, and (ii) in compensation for the injury and anguish caused by the initial order, and subsequent upholding of that order, to dismiss him from service with the organization and consequential damage to his reputation, a sum equivalent to two years' net base salary as provided for in the Statute.

..."

Whereas the Respondent filed his answer on 12 February 1992;

Whereas the facts in the case are as follows:

The Applicant, a national of Kenya, entered the service of UNEP on 17 April 1989. He was initially offered a one year fixed-term appointment at the G-7 level, as a Junior Finance Assistant in the Finance and Budget Section. On 1 May 1990, his appointment was extended for a further year.

On 17 July 1990, the Applicant submitted to the Joint Medical Service, UNEP, a medical claim for a total of K-Sh.[Kenyan Shillings] 1,600 for medical services, allegedly rendered to the Applicant's wife, by Dr. C. K. Maringo. On 3 August 1990, the Acting Head Nurse of the Joint Medical Service informed the Chief, Personnel Services, UNEP, that since she considered those charges were too high for a general practitioner, she had decided to contact the doctor's office. After making inquiries, she found that the Applicant's wife had never been a patient at that office and that the doctor's fees were normally K-Sh.100.

On 16 August 1990, the Officer-in-Charge of the Personnel Section, UNEP, informed the Acting Assistant Executive Director of Fund and Administration, UNEP, that the Applicant had submitted a fraudulent medical claim. He recommended the termination of the Applicant's appointment, pursuant to staff regulation 9.1, as, in his view, the Applicant did not meet the highest standards of integrity required to be employed by the United Nations.

On 21 August 1990, the Acting Assistant Executive Director recommended to the Executive Director, UNEP, that the Applicant be separated from UNEP

service for serious misconduct in accordance with staff regulation 9.1. On 31 August 1990, the Executive Director approved the recommendation to dismiss the Applicant for serious misconduct.

In a letter dated 11 September 1990, the Officer-in-Charge, Personnel Section, informed the Applicant of the decision of the Executive Director to dismiss him, as of 12 September 1990, for serious misconduct in accordance with staff regulation 9.1.

On 25 September 1990, the Applicant requested the Secretary-General to review the decision and to reinstate him. On 4 October 1990, the Chief, Administrative Review Unit, Headquarters, requested the Executive Director to comment on the Applicant's request. In a reply dated 17 October 1990, the Acting Assistant Executive Director of Fund and Administration explained the events that had led to the contested decision, and noted that when "the doctor ... and the UN Head Nurse discussed the matter with Mr. Adongo, [he] very reluctantly admitted that it was a forged receipt" and that he "had not been co-operative in disclosing the identity of the person who had issued the fake receipt". The reply continued that, during a discussion with the Personnel Officer, the Applicant "regretted the incident but simply pleaded for mercy. Once again, he declined to disclose the identity of the person who had issued the forged receipt and as a result, was informed that he had committed a serious offence which would therefore be a matter for appropriate disciplinary action."

In a cable dated 16 November 1990, the Chief, Administrative Review Unit, Headquarters, informed the Officer-in-Charge, Personnel Section, UNEP, that:

> "... TERMINATION OF APPOINTMENT UNDER STAFF REGULATION 9.1 AND SUMMARY DISMISSAL FOR SERIOUS MISCONDUCT UNDER STAFF REGULATION 10.2 ARE TWO SEPARATE AND DISTINCT ADMINISTRATIVE ACTIONS AND CANNOT BE MERGED. MR. ADONGO'S CASE WAS CLEARLY A DISCIPLINARY MATTER AND COULD ONLY BE DISPOSED OF WITHIN THE PARAMETERS OF CHAPTER 10 OF THE STAFF RULES FOR WHICH THERE HAS BEEN NO DELEGATION OF AUTHORITY TO THE HEAD OF UNEP. WHILE THERE HAS BEEN A DELEGATION OF AUTHORITY FOR ACTION UNDER CHAPTER 9 OF THE STAFF RULES, CHAPTER 10 REMAINS WITHIN THE DISCRETION OF THE SECRETARY-GENERAL ALONE."

On 26 November 1990, the Acting Chief, Administrative Service, informed the Applicant that the decision to dismiss him had been reversed and that he was being reinstated as of 13 September 1990, but was being suspended from duty with full pay, pending further investigation under staff rule 110.2. On 4 March 1991, the Acting Chief, Administrative Service, informed the Applicant that the Secretary-General had decided to establish an ad hoc Joint Disciplinary Committee (JDC) to investigate his case, gave him a copy of the allegations against him and advised him of his right to seek the assistance of counsel in accordance with staff rule 110.4(a).

The ad hoc JDC adopted its report on 30 April 1991. Its recommendations read, in part, as follows:

> "V. Recommendations
>
> 21. As the Committee did not find conclusive evidence of a deliberate attempt by Mr. Adongo to defraud the Organization but found that he should have exercised due care in scrutinizing the receipt given to him by his wife, the Committee recommends that Mr. Adongo's entitlement for reimbursement of medical expenses in respect of his wife should be forfeited in accordance with article 8.2.1 of the Medical Insurance Plan.
>
> 22. In order to impress on him his responsibility vis-a-vis the Organization and the seriousness of his failure to fully assume that responsibility, the Committee further recommends that Mr. Adongo should lose one step within grade in accordance with staff rule 110.3 (a) (ii).
>
> ..."

On 29 May 1991, the Assistant Executive Director transmitted to Headquarters the report of the ad hoc JDC. He also transmitted the Executive Director's recommendation that since the Applicant did not meet the highest standards of integrity required by Article 101, paragraph 3, of the Charter, his appointment should not be extended beyond its expiration date of 30 April 1991 and his entitlement to reimbursement of medical expenses ought to be forfeited.

On 5 August 1991, the Acting Under-Secretary-General for Administration and Management informed the Applicant that the Secretary-General had decided to separate him from service without compensation in lieu of notice or payment of termination indemnity.

On 8 November 1991, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The allegation that the Applicant submitted a forged receipt in a deliberate attempt to defraud the Organization was never established.

2. The Respondent's contention that the JDC recommendations were based on a clear mistake of law is without foundation.

3. The Respondent did not take into account the cultural rules governing Kenyian society which require absolute loyalty to the immediate family.

Whereas the Respondent's principal contentions are:

1. The decision to dismiss the Applicant for fraud implemented the Charter requirement that staff have the highest standards of integrity and was thus properly taken.

2. The Applicant's dismissal was preceded by a fair hearing which fully respected his due process rights.

The Tribunal, having deliberated from 29 October to 20 November 1992, now pronounces the following judgement:

I. The only question in this case is whether the Secretary-General has correctly used his discretion. The Tribunal has never questioned the wide discretion the Secretary-General enjoys in disciplinary matters, but has always averred that it should be used with full regard to due process and be free of bias or prejudice or other extraneous factors.

II. The Applicant admits that he submitted a false medical claim in respect of his wife and on a receipt given by her. He insists that all his attempts to elicit from her how she came to obtain this obviously forged receipt and who gave it to her, have come to nothing. The Tribunal does not know if the receipt was supposed to have been given after payment to the doctor or was prepared in anticipation of reimbursement. In the former case, some questioning about how and where the payment was originally made might have elicited a reply and thrown some light on the transaction. However no enquiry was, so far as the Tribunal can determine, directed to that end.

III. The Applicant states that at the time he submitted his claim, he was not aware that the receipt was false. After he came to know that it was so, he could not let his wife down without incurring much social stigma. The Tribunal notes that irrespective of such considerations, the relationship between the Applicant and his wife was strained (they have since separated), and so it would have been difficult, in any event, for the Applicant to receive ready cooperation from his wife.

IV. The Respondent's contention is that the Applicant knowingly and deliberatly made a false claim. Had his fraud not been discovered, he would have accepted payment against the receipt and so benefited financially. In the circumstances, the Respondent considered the Applicant to be lacking the degree of probity and honesty expected of staff members.

V. Initially, the question of the Applicant's guilt was resolved by the UNEP offices at Nairobi. On a final and firm recommendation from the Acting Assistant Executive Director of Fund and Administration, to the Executive Director, UNEP, the Applicant was informed that his services with UNEP would be terminated "for serious misconduct in accordance with staff regulation 9.1. Your last working day will be 12 September 1990." The Applicant wrote to the Secretary-General protesting against this decision. UNEP was advised by Headquarters that, since this was a disciplinary case, staff rule 110.4 should apply and that an ad hoc Joint Disciplinary Committee (JDC) should be set up "for advice as to what measures, if any, are appropriate." At the same time,

the Applicant was suspended with pay from 13 September 1990, pending the result of the investigation by the JDC, established early in March 1991.

VI. The JDC report was adopted on 30 April 1991. It appears from the file that it was first considered by the UNEP Administration about the end of May 1991. In a letter dated 29 May 1991, from the Acting Assistant Director of Fund and Administration to the Director, Staff Administration and Training Division, Office of Human Resources Management, it is stated:

> "The Executive Director emphasizes that the [Applicant] does not meet the highest standards of integrity required by Article 101, paragraph 3 of the Charter and that the work of a Finance Assistant (Accountant) calls specifically for honesty and irreproachable conduct. The ad hoc Joint Disciplinary Committee failed to secure written statements from the [Applicant's] spouse who in its view was to be blamed for the incident and from the [Applicant] himself to formally confirm his oral statements to the Committee, the Chief of Personnel Section and the Chairman of the Staff Association. [The Applicant's] appointment with UNEP should, in our view, not be renewed beyond its expiry date of 30 April 1991 and his entitlement for reimbursement of the fraudulent medical receipts should be forfeited as the ad hoc Joint Disciplinary Committee had recommended."

This recommendation, on the basis of which the Secretary-General decided to separate the Applicant with effect from 30 August 1991, repeated in fact the views of those officials of UNEP who had decided, as early as August 1990, that the Applicant's services with UNEP should be terminated. This extraneous factor - the decision already taken to separate the Applicant - prevented the proper assessment and, consequently, improperly influenced the final decision of the Secretary-General.

VII. The Tribunal therefore holds that while the Respondent had undoubted discretion to accept or reject the advice given to him, his discretion was not exercised without some bias or extraneous consideration due to the manner in which this case was mistakenly handled in UNEP in Nairobi in 1990. In view of this, the Applicant is entitled to some relief and the Tribunal assesses it as three months of his net base salary, at the time of his separation from service.

VIII. Finally, the Tribunal notes that the Applicant was on a fixed-term contract, due to expire on 30 April 1991, but because of the proceedings in the JDC and the follow-up action on its report, he continued to draw full pay, while under suspension, until the end of August 1991.

IX. For the foregoing reasons, the Tribunal orders the Respondent to pay to the Applicant the sum of three months of the Applicant's net base salary, at the time of his separation from service.

X. All other pleas are rejected.

(Signatures)

Samar SEN
Vice-President, presiding

Ioan VOICU
Member

Mikuin Leliel BALANDA
Member

New York, 20 November 1992

R. Maria VICIEN-MILBURN
Executive Secretary